THE HON'BLE Ms. JUSTICE G. ROHINI

W.P.No.8812 of 2005

Dated the 31st day of August, 2005

Between:

A. Gopala Krishnaiah, s/o. Venkata Buchaiah,

Age: 79 years, Occ: Fair Price Shop Dealer,

R/o. Village Ramachandrapuram,

Post: Gubbagurthi Mandal, Konijerla,

Via Vvyra, Khammam District.

… **Petitioner**

and

The Joint Collector,

Khammam, Khammam District

and two others … **Respondents**

ORDER:

This writ petition is filed seeking a declaration that the proceedings of the second respondent-Revenue Divisional Officer, Khammam, dated 23-03-2005, as arbitrary and illegal.

Heard the learned counsel for the petitioner and the learned Government Pleader appearing for the respondents.

A perusal of the impugned order dated 23-03-2005 shows that the same was passed by the second respondent in exercise of the powers conferred under clause 17 of the Andhra Pradesh State Public Distribution System Control Order, 2001 (for short 'the Control Order'), thereby canceling the authorization of the petitioner and further directing the petitioner to remit a sum of Rs.2,785/- towards differential value of

P.D.S. Kerosene alleged to have been misused by the petitioner.

It is not in dispute that the petitioner is a fair price shop dealer of Gubbagurthi Village and it appears that the impugned proceedings were initiated on the basis of the inspection said to have been conducted by the third respondent-Mandal Revenue Officer, Konejerla Mandal, Khammam District, on 30-01-2005 during which it was found that there was a variation of 78 liters of kerosene oil in the said fair price shop.

The impugned order also shows that proceedings under Section 6-A of the Essential Commodities Act, 1955 (for short 'the Act'), were also initiated before the first respondent-Joint Collector, Khammam, so far as the seized stock is concerned. That apart the first respondent also directed the second respondent-Revenue Divisional Officer, who is the competent authority, to take appropriate action under Clause 17 of the Control Order. Accordingly, a show cause notice was issued on 18-02-2005 calling upon the petitioner to submit his explanation for two charges mentioned therein, within seven days from the date of receipt of notice. The petitioner states that he submitted an explanation on 22-03-2005, but the impugned order was passed on the next day i.e., 23-03-2005 without considering his explanation. Hence, this writ petition seeking the above reliefs.

In the counter affidavit filed on behalf of the respondents, it is categorically stated that the explanation submitted by the petitioner was received in the office of the second respondent on 23-03-2005 after issuing the impugned order.

The contention of the learned counsel for the petitioner is that the impugned order was actually signed on 02-04-2005 and in the circumstances, the second respondent ought to have taken into consideration the explanation submitted by the petitioner.

However, the learned Government Pleader disputes the same and submits that the second respondent was justified in passing the impugned order on the basis of the material available on record.

At the outset, it is to be noted that against the impugned order, an appeal lies to the first respondent-Joint Collector and as such, the petitioner ought to have availed the said alternative remedy available under the statute. Without exhausting the said remedy of appeal, the petitioner cannot invoke the extraordinary jurisdiction

of this Court under Article 226 of the Constitution of India.

That apart the plea raised by the petitioner that the impugned order was actually passed on 02-04-2005 after receiving the explanation submitted by the petitioner is a pure question of fact, which can be decided only after scrutiny of the relevant record.

Though the learned counsel for the petitioner relied upon a decision of this Court in ***M. Shashikala Vs. The Collector, Civil Supplies*** and contended that since the first respondent has already arrived at a conclusion in the proceedings under Section 6-A of the Act, no purpose would be served by preferring the appeal before the same authority against the impugned order,
I am unable to agree. The facts in the said decision are entirely different and therefore the ratio in the said case is of no assistance to the case on hand.

In the circumstances, without expressing any opinion on the merits of the case, I deem it appropriate to dispose of the writ petition granting leave and liberty to the petitioner to prefer an appeal before the first respondent-Joint Collector, within a period of four weeks from the date of receipt of this order, in which event, the first respondent shall consider the same and pass appropriate orders in accordance with law.

Accordingly, the writ petition is disposed of. No order as to costs.

_____

G. ROHINI, J

Date: 31st August, 2005

lsn